

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONN JONES, ANTHONY J.
SORRENTINO, ALICE SHADA, and
THE SILVERSTONE GROUP,

Plaintiffs,

v.

RELIASTAR LIFE INSURANCE, and
ING LIFE INSURANCE AND ANNUITY,

Defendants.

8:05CV185

JUDGMENT

This matter is before the court on plaintiffs' motion for hearing and entry of judgment on the settlement agreement, Filing No. 23. Defendants have not responded to the motion. The court finds that no hearing is necessary.

Plaintiffs have shown that defendants agreed to settle this action according to the terms set forth in Filing No. 21, Exhibit ("Ex.") G. Defendants represented to the court that the matter had been settled. Filing No. 14. On September 29, 2005, in reliance on those representations, the court ordered the parties to file a joint stipulation for dismissal on or before October 31, 2005. *Id.* That deadline was extended three times. Filing Nos. 15, 16, and 17. Plaintiffs have shown that the parties' failure to file a joint stipulation for dismissal is due to the conduct of defendants. See Filing No. 21, Index of Evidence, Affidavit of Marcia A. Washkuhn ("Washkuhn Aff."), Exs. A-G; Filing No. 24, Index of Evidence, Washkuhn Aff., Exs. A-C.

On February 1, 2006, pursuant to further representations that settlement had been reached, the court ordered that the settlement be consummated on or before February 6, 2006, and ordered defendants to pay the sum of \$250.00 per day to plaintiffs until the

settlement amount was paid. Filing No. 19. On April 4, 2006, defendants were ordered to issue payment of settlement funds by April 17, 2006. Filing No. 22. Plaintiffs have shown that defendants have failed and refused to sign the settlement agreement or to comply with its terms. See Filing No. 21, Index of Evidence, Washkuhn Aff., Exs. A-G; Filing No. 24, Index of Evidence, Washkuhn Aff., Exs. A-C.

There is no dispute that the defendants agreed to pay plaintiffs the sum of \$110,000.00, payable to the Silverstone 401(k) plan, in exchange for dismissal of the suit and certain releases. Filing No. 21, Index of Evidence, Washkuhn Aff., Ex. G. Defendants further agreed to provide Silverstone with a report showing the amount the Silverstone 401(k) lost in the plan between December 3, 2004, and January 3, 2005, to enable Silverstone to allocate the loss among its plan members. *Id.* Accordingly,

IT IS HEREBY ORDERED:

1. Judgment is entered in favor of plaintiffs and against defendants in the amount of \$110,000.00, payable to the Silverstone 401(k) plan.

2. Judgment is entered in favor of plaintiffs and against defendants in the amount of \$23,500.00, representing \$250.00 per day for 94 days from February 6, 2006, until the date of this order, as a sanction for failure to comply with the court's orders.

3. Within ten (10) days of the date of this order, defendants shall provide Silverstone with a report showing the amount the Silverstone 401(k) lost in the plan between December 3, 2004, and January 3, 2005; defendants will be held in contempt of court for failure to comply with this order.

4. Defendants shall continue to incur sanctions in the amount of \$250.00 per day from and after this date until the settlement funds are paid and the report furnished.

5. Plaintiffs are awarded attorneys' fees and costs for the reasonable cost of bringing their motions to enforce the settlement agreement and for judgment on the settlement agreement (Filing Nos. 20 and 23); plaintiffs shall file a motion for fees within fourteen days of the date of this order.

6. Pursuant to Fed. R. Civ. P. 58(c)(2), the timely filing of a motion for attorneys' fees under Fed. R. Civ. P. 54(d)(2) will have the same effect under Fed. R. App. P. 4(a)(4) as a timely motion under Rule 59. Accordingly, the time to file an appeal runs for all parties from the entry of the order disposing of the motion for attorneys' fees.

DATED this 11th day of May, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON

UNITED STATES DISTRICT JUDGE